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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/727,901 | 12/01/2000 | Michael J. Recchia JR. | 652 P 006 | 3682 |
| 27717 | 7590 | 04/22/2004 | EXAMINER | |
| SEYFARTH SHAW 55 EAST MONROE STREET SUITE 4200 CHICAGO, IL 60603-5803 | | | MADSEN, ROBERT A | |
| | | ART UNIT | PAPER NUMBER | |
| | | 1761 | | |

DATE MAILED: 04/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | |
|------------------------------|-----------------|---------------------|
| Office Action Summary | Application No. | Applicant(s) |
| | 09/727,901 | RECCHIA, MICHAEL J. |
| | Examiner | Art Unit |
| | Robert Madsen | 1761 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 23 May 2003.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-15 and 21-30 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-15 and 21-30 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a)
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d)

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____

4) Interview Summary (PTO-413)
Paper No(s)/Mail Date _____

5) Notice of Informal Patent Application (PTO-152)

6) Other: _____

DETAILED ACTION

1. The Amendment filed May 23,2003 has been entered. Claims 16-20 have been cancelled. Claims 21-30 have been added. Claims 1-15,21-30 remain pending in the application.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 23 - 30 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification does not disclose a third transverse seal *between* the flat unfolded first and mesh sheets, as recited in claims 23 and 29. The specification discloses two possible means of closing the opening of the bag: (1) a transverse seal between the first and second sheets spaced from the mesh sheet (i.e. item 44), and (2) gathering the second end of the bag near the second seal line wherein the mesh and first sheet are gathered together (i.e. item 45). Thus, when a third transverse seal is provided at the second end of the bag that closes the opening between the mesh and first sheet , (a) the sheets are not flat (i.e. they are gathered/bunched together) and (b) the seal is not *between* the mesh and first sheet (i.e. it is outside of the sheets).

Claim Rejections - 35 USC § 103

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
5. Claims 1,2,14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Meseguer (DE 2972720932 U1) in view of Fox et al. (US 6190044 B1)
6. Regarding claims 1,2,14, Meseguer, teach a horticultural product bag comprising a mesh sheet with crossing sets of strands and one set perpendicular to the side as recited in claim 14 (see item 10 in Figures 1 and 2, item 2 of Figures 1- 4), a first thermoplastic sheet (item 1 of Figures 3 and 4) a second thermoplastic sheet (item 3 of Figures 3 and 4), side seals (item 6 of Figure 3) , first end transverse seal (i.e. item 7) between the first end of the mesh sheet and the first thermoplastic sheet at the first end of the thermoplastic sheet as recited in claim 2, a second end transverse seal between the mesh sheet and the second thermoplastic sheet at the second end of the bag, and the first thermoplastic sheet at the second end of the bag beyond the mesh sheet by substantially similar distance as the second sheet. Meseguer further teach two holes for holding the bag at the top, or second end, of the bag (Figures 3 and 4, Abstract).). However, Meseguer is silent in teaching that at the first end the thermoplastic sheet is folded around the mesh sheet as recited in claim 1.
7. Fox et al. also teach a produce bag comprising a mesh sheet with crossing sets of strands and one set perpendicular to the side as recited in claim 14(item 10 of Figure 5), a first thermoplastic sheet (item12 of Figure 5), and a second thermoplastic sheet (item 32 of Figure 5) forming a produce bag structure as recited in claim 1, including

side seals (items 14 and 16 in Figure 1), a first transverse seal line (item 21 in Figure 5) at the first end of bag and first end of the thermoplastic sheet, as recited in claim 2, and a second seal as the second end of the bag between the second thermoplastic sheet and the mesh sheet (item 34). Fox et al. further teach the first end of the bag will have greater strength for filling large produce items by folding the first thermoplastic sheet over (at 10 b) the mesh sheet such that the mesh sheet is between the two portions of the folded thermoplastic sheet (at item 10a) and the first transverse seal is between the first thermoplastic sheet end and the outside of the mesh sheet (Column 1, lines 51-66, Column 4, lines 40-59).

8. Therefore, it would have been obvious to modify Meseguer, and include folding the first thermoplastic sheet over (at 10 b) the mesh sheet such that the mesh sheet is between the two portions of the folded thermoplastic sheet (at item 10a) and the first transverse seal is between the first thermoplastic sheet end and the outside of the mesh sheet since Fox et al. teach it is desirable to fold the first thermoplastic sheet to strengthen the second end of a produce bag comprising the same general structure as Meseguer. One would have been substituting one first end design structure for another for the same purpose: a produce bag comprising a mesh sheet sealed to a first and second thermoplastic sheet.

9. Claims 3-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Meseguer (DE 2972720932 U1) in view of Fox et al. (US 6190044 B1) as applied to claims 1,2,14, above, further in view of Mercadini (EP0788974 A2).

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10. Regarding claims 3 and 4, Meseguer teach the opening end of the bag is formed by the first and second thermoplastic sheets and teach holes for holding the bag at the opening end of the bag., but is silent in teaching a third transverse seal between the first and second thermoplastic sheets being spaced from the mesh sheet as recited in claims 3 and 4.

11. Mercadini also teaches a produce bag with one mesh side and one thermoplastic side wherein the bottom of the bag is formed by folding the thermoplastic sheet over the mesh sheet and the top of the bag includes holes for holding the bag (Abstract, Figure 5). Mercadini further teaches closing the bag by providing a transverse seal above and below the holes to seal the sheets together (Column 2, lines 20-30). Therefore, it would have been obvious to include a third transverse seal between the two thermoplastic sheets of Meseguer since Mercadini teach closing the bag includes transverse seals above and below the holes for holding the bag, and in the case of Meseguer the a third transverse seal above the holes would be spaced from the mesh sheet and only between the two thermoplastic sheets. One would have been substituting one conventional means for closing a bag for another for the same purpose: to provide a produce bag comprising a mesh side and a thermoplastic side with two holes at the filling end of the bag.

12. Regarding claim 5, Meseguer teach a horticultural bag that may contain oranges (Abstract), but is silent in teaching onions. However, once it was known that the bag is for produce items such as oranges , which are conventionally packaged in mesh wall comprising bag, to select any particular type of produce, such as onions, would have

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been an obvious matter of choice depending on whether the produce is conventionally packaged in mesh wall comprising bags.

13. Claims 6-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Meseguer (DE 2972720932 U1) in view of Fox et al. (US 6190044 B1) as applied to claims 1,2,14, above, further in view of Yamagata (JP411130089A) and Cammack (US 5741076).

14. Regarding claims 6,8,9, modified Meseguer, as discussed above in the rejection of claim 1, teaches the first thermoplastic sheet is folded over the mesh sheet and sealed with a first transverse seal at the first end , but is silent in teaching a third thermoplastic sheet that is smaller than the first sheet, as recited in claim 8, and joined to the first sheet and mesh sheet by the first seal line and inside of the mesh sheet as recited in claims 6 and 9.

15. Yamagata also teaches a produce bag comprising a mesh sheet and a first thermoplastic sheet wherein the thermoplastic sheet is folded over the mesh sheet and sealed to the mesh sheet. However, Yamagata teaches providing an additional, smaller thermoplastic sheet, as recited in claim 8, on the inside of the mesh sheet at the seal to provide a means for adhering the folded thermoplastic sheet to the mesh, as recited in claims 6 and 9 (The embodiment of Figure 1 in light of paragraphs 16-22).

16. Cammack also teach sealing a thermoplastic sheet to a mesh sheet. Cammack is relied on as further evidence of utilizing an additional sheet on the opposite side of

the thermoplastic sheet to provide a means for bonding the thermoplastic sheet to the mesh sheet (Column 5, lines 1-17).

17. Therefore, it would have been obvious to provide a third thermoplastic sheet that is smaller than the first sheet, as recited in claim 8, and joined to the first sheet and mesh sheet by the first seal line and inside of the mesh sheet as recited in claims 6 and 9, to the bag of Meseguer since Yamagata teaches that in order to seal a thermoplastic sheet folded from one side of a produce bag onto the other mesh side of the bag, a smaller thermoplastic sheet is positioned under/ inside the mesh sheet to provide the sealing surface, and Cammack teaches sealing a mesh sheet and a thermoplastic sheet by adhering the thermoplastic sheet to a smaller sheet on the opposite side of the mesh sheet. One would have been substituting one means of sealing a mesh sheet to a thermoplastic sheet for the same purpose: adhering a folded portion of the thermoplastic sheet to the outside of the mesh sheet.

18. Regarding 7 and 10, modified Meseguer (i.e. as discussed in the rejection of claim 1 above) has a first sheet positioned outside of the mesh sheet in the area adjacent to the first seal line.

19. Regarding claims 12 and 13, see the rejection of claims 2 and 14, respectively.

20. Claims 15,21,22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Meseguer (DE 2972720932 U1) in view of Fox et al. (US 6190044 B1) as applied to claims 1,2,14, above, further in view of Wolske (US 4207983) and Cammack (US 5741076).

21. Meseguer teach the opening end of the bag for horticultural bag is formed by the first and second thermoplastic sheets and teach holes for holding the bag at the opening end of the bag, but Meseguer is silent in teaching the bag is closed by a bunching member as recited in claim 15, such as a wire tie as recited in claim 21 adjacent to the second thermoplastic sheet as recited in claim 22.

22. Wolske also teaches a horticultural, or produce, bag comprising a mesh wall that is attached to a thermoplastic sheet providing holes for holding the bag, wherein the bag is closed with a wire tie after filling (Abstract, Column 3, lines 20-26 Column 3, line 60 to Column 4, line 2).

23. Cammack is relied on as further evidence of the conventionality of a produce bag comprising a mesh wall that is attached to a thermoplastic sheet providing holes for holding the bag , and closing the bag with a wire tie after filling is completed (Abstract, Figure6, Column 5, lines 18-34).

24. Therefore, to modify Meseguer and close the bag by a bunching member as recited in claim 15, such as a wire tie as recited in claim 21 would have been an obvious matter of design choice depending on how the bags were filled since Meseguer teaches the open end of the bag provides holes for holding the bag, Wolske and Cammack teach when such holes are used during the filling process the bags are sealed at the mouth using a wire tie. One would have been substituting one conventional means for closing a bag for another. It would have been further obvious to place the wire tie adjacent to the second thermoplastic sheet as recited in claim 22, since this is end the bag that is open and Cammack teaches closing the end of the thermoplastic sheets.

25. Claims 23,24, 28-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Meseguer (DE 2972720932 U1) in view of Fox et al. (US 6190044 B1) and Mercadini (EP0788974 A2)

26. Regarding claims 23,24, 28,29,30, Meseguer, teach a horticultural product bag comprising a mesh sheet with crossing sets of strands and one set perpendicular to the side as recited in claim 28 (see item 10 in Figures 1 and 2, item 2 of Figures 1- 4), a first thermoplastic sheet (item 1 of Figures 3 and 4) a second thermoplastic sheet (item 3 of Figures 3 and 4), side seals (item 6 of Figure 3) , first end transverse seal (i.e. item 7) between the first end of the mesh sheet and the first thermoplastic sheet at the first end of the thermoplastic sheet as recited in claim 24, a second end transverse seal between the mesh sheet and the second thermoplastic sheet at the second end of the bag, and the first thermoplastic sheet at the second end of the bag beyond the mesh sheet by substantially similar distance as the second sheet. Meseguer further teach two holes for holding the bag at the top, or second end, of the bag (Figures 3 and 4, Abstract).). However, Meseguer is silent in teaching that at the first end the thermoplastic sheet is folded around the mesh sheet as recited in claim 23 and a third transverse seal either between the flat unfolded first and second sheets, as recited in claim 30 and 23, or between the first and mesh sheets as recited in claim 29 and 23.

27. With respect to the particular first end structure, Fox et al. also teach a produce bag comprising a mesh sheet with crossing sets of strands and one set perpendicular to the side as recited in claim 28(item 10 of Figure 5), a first thermoplastic sheet (item12 of Figure 5), and a second thermoplastic sheet (item 32 of Figure 5) forming a produce

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bag structure as recited in claim 23, including side seals (items 14 and 16 in Figure 1), a first transverse seal line (item 21 in Figure 5) at the first end of bag and first end of the thermoplastic sheet, as recited in claim 24, and a second seal as the second end of the bag between the second thermoplastic sheet and the mesh sheet (item 34). Fox et al. further teach the first end of the bag will have greater strength for filling large produce items by folding the first thermoplastic sheet over (at 10 b) the mesh sheet such that the mesh sheet is between the two portions of the folded thermoplastic sheet (at item 10a) and the first transverse seal is between the first thermoplastic sheet end and the outside of the mesh sheet (Column 1, lines 51-66, Column 4, lines 40-59) as recited in claim 24. Therefore, it would have been obvious to modify Meseguer, and include folding the first thermoplastic sheet over (at 10 b) the mesh sheet such that the mesh sheet is between the two portions of the folded thermoplastic sheet (at item 10a) and the first transverse seal is between the first thermoplastic sheet end and the outside of the mesh sheet since Fox et al. teach it is desirable to fold the first thermoplastic sheet to strengthen the second end of a produce bag comprising the same general structure as Meseguer. One would have been substituting one first end design structure for another for the same purpose: a produce bag comprising a mesh sheet sealed to a first and second thermoplastic sheet.

28. With respect to a third transverse seal, Mercadini also teaches a produce bag with one mesh side and one thermoplastic side wherein the bottom of the bag is formed by folding the thermoplastic sheet over the mesh sheet and the top of the bag includes holes for holding the bag (Abstract, Figure 5). Mercadini further teaches closing the bag

by providing a transverse seal above and below the holes to seal the sheets together (Column 2, lines 20-30). Therefore, it would have been obvious to include a third transverse seal between the two thermoplastic sheets of Meseguer , as recited in claims 23 and 30 since Mercadini teach closing the bag includes transverse seals above and below the holes for holding the bag, and in the case of Meseguer the a third transverse seal above the holes would be spaced from the mesh sheet and only between the two thermoplastic sheets. To further include a third transverse seal between the first and mesh sheet, as recited in claim 29, would have been an obvious design choice, depending how far down below the holes one placed the seal since Mercadini teach closing the bag includes transverse seals above and below the holes for holding the bag. One would have been substituting one conventional means for closing a bag for another for the same purpose: to provide a produce bag comprising a mesh side and a thermoplastic side with two holes at the filling end of the bag.

29. Claims 25-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Meseguer (DE 2972720932 U1) in view of Fox et al. (US 6190044 B1) and Mercadini (EP0788974 A2) as applied to claims 23,24,28-30 above, further in view of Yamagata (JP411130089A) and Cammack (US 5741076).

30. Regarding claims 25 –27, modified Meseguer (i.e. as discussed in the rejection of claim 23 above) has a first thermoplastic sheet folded outside of the mesh sheet in the area adjacent to the first seal line, as recited in claim 26, but is silent in teaching a third thermoplastic sheet that is smaller than the first sheet, as recited in claim 27, and

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joined to the first sheet and mesh sheet by the first seal line and inside of the mesh sheet as recited in claim 25

31. Yamagata also teaches a produce bag comprising a mesh sheet and a first thermoplastic sheet wherein the thermoplastic sheet is folded over the mesh sheet and sealed to the mesh sheet. However, Yamagata teaches providing an additional, smaller thermoplastic sheet, as recited in claim 27, on the inside of the mesh sheet at the seal to provide a means for adhering the folded thermoplastic sheet to the mesh, as recited in claim 25(The embodiment of Figure 1 in light of paragraphs 16-22).

32. Cammack also teach sealing a thermoplastic sheet to a mesh sheet. Cammack is relied on as further evidence of utilizing an additional sheet on the opposite side of the thermoplastic sheet to provide a means for bonding the thermoplastic sheet to the mesh sheet (Column 5, lines 1-17).

33. Therefore, it would have been obvious to provide a third thermoplastic sheet that is smaller than the first sheet, as recited in claim 27, and joined to the first sheet and mesh sheet by the first seal line and inside of the mesh sheet ,as recited in claim 25, to the bag of Meseguer since Yamagata teaches that in order to seal a thermoplastic sheet folded from one side of a produce bag onto the other mesh side of the bag, a smaller thermoplastic sheet is positioned under/ inside the mesh sheet to provide the sealing surface, and Cammack teaches sealing a mesh sheet and a thermoplastic sheet by adhering the thermoplastic sheet to a smaller sheet on the opposite side of the mesh sheet. One would have been substituting one means of sealing a mesh sheet to a

thermoplastic sheet for the same purpose: adhering a folded portion of the thermoplastic sheet to the outside of the mesh sheet.

Response to Arguments

34. Applicant's arguments with respect to the rejections made in the Office Action mailed March 13,2003 in light of the amended claim language have been fully considered and are persuasive. Therefore, the rejections have been withdrawn. However, upon further consideration, new grounds of rejection have been made for the reasons set forth above.

Conclusion

35. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

36. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

37. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Madsen whose telephone number is (571) 272-1402. The examiner can normally be reached on 7:00AM-3:30PM M-F.

38. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

39. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Robert Madsen
Examiner
Art Unit 1761




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